

GEORGE L. BROWN
Claimant

FABPRO ORIENTED POLYMERS, INC.
Respondent

PHOENIX INSURANCE COMPANY
Insurance Carrier

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ORDER

ISSUE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ ruled that claimant notified his supervisor of his injury on March 1, 2000. Claimant testified that on March 1, 2000 he reported to the lead winder, Melissa, that he had injured his arm.

"Q. Did you discuss that with anybody on March 1, 2000?

¹ K.S.A. 44-520.

² In its Request for Review respondent also raised the issue of whether claimant's injury arose out of and in the course of his employment with respondent. In its brief to the Board, however, respondent stated that notice was the sole issue involved in this appeal.

- "A. I told my lead winder at 6:00 that my arm was hurting and she said in an hour, we can all go home.
- "Q. What was the name of your lead winder that day?
- "A. Melissa.
- "Q. Do you know her last name?
- "A. Not offhand.
- . . .
- "Q. And you advised her that because the machines had been increased, you had sustained an injury?
- "A. Yes."³

The lead winder, Melissa, did not testify and, at least for purposes of this appeal, respondent does not dispute that the above conversation took place. Instead, respondent disputes the lead winder's status as a supervisor. Respondent argues that the lead winder is claimant's co-worker and not his supervisor. It is respondent's position, therefore, that notice to the lead winder does not constitute notice to the respondent under K.S.A. 44-520.

Mr. Stan Goetz, respondent's production manager, testified that Mr. Greg Wohler was the shift supervisor on the date of accident. Furthermore, Melissa Stuber, the lead winder, was not a supervisor.

- "Q. Mr. Brown testified that he told his -- told somebody named Melissa on March 1st that his shoulder was bothering him. Who is Melissa?
- "A. Melissa Stuber is the lead winder. There's a lead extrusion operator, a lead winder and a lead packager. She would directly report to Greg Wohler.
- "Q. And is Melissa Stuber, is she a supervisor?
- "A. She's not considered a supervisor. A lead just has, say, four, three to four, five people underneath them and they're directing the work at hand but they are not a supervisor."⁴

Claimant acknowledged that Greg Wohler was the shift supervisor. However, claimant also considered the lead winder to have a supervisory role.

- "Q. Was she [Melissa] your supervisor during your shift that day?"
- "A. She generally walks around and [is] everybody's supervisor.
- "Q. She had some supervisor role over you on March 1, 2000?
- "A. Yeah. She lead winds everybody."⁵

³ Preliminary Hearing Transcript at 11.

⁴ Preliminary Hearing Transcript at 61-62.

⁵ Preliminary Hearing Transcript at 11.

The Appeals Board agrees with respondent's contention that notice to a co-worker does not constitute notice to an employer. In addition, by giving notice to the lead winder claimant was not following the procedure respondent had established for reporting accidents at work. Nevertheless, claimant perceived the lead winder position as supervisory and perceived Melissa Stuber not as a co-worker but as someone in a position of authority over him. Claimant's perceptions in this regard are supported somewhat by Mr. Goetz' testimony. Although Ms. Stuber does not have the title of supervisor, Mr. Goetz describes her job duties as supervisory. Mr. Goetz and claimant agree that Ms. Stuber's job includes supervising claimant's work. Thus, Ms. Stuber was claimant's immediate supervisor.

Although interpreting an earlier version of K.S.A. 44-520, the Kansas Supreme Court in Phillips v. Helms, Inc., 201 Kan. 69, 439 P.2d 119 (1968), held that notice to an immediate superior is sufficient notice to the employer. The claimant in Phillips reported his accident to the acting foreman.

Based upon the record compiled to date, the Appeals Board finds that respondent was given timely notice of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on May 16, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: Charles W. Hess, Wichita, KS
William L. Townsley III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director